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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 827

STANLEY FIELD,

Petitioner,

vs.

DE MET'S INCORPORATED,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Stanley Field, respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit to review a judgment entered by that court on October 1, 1941, in so far as it reverses the judgment entered in the above cause by the District Court for the Northern District of Illinois, Eastern Division. A petition for certiorari, together with the printed record in the cause, has been filed by the plaintiff below and cross-petitions for certiorari have been filed by certain defendants.

This cause was argued orally before the Circuit Court of Appeals at the same time as *Aiken, et al.* v. *Insull, et al.* The cases involved different companies, different directors, and

different transactions. The petitioner, Stanley Field, had no connection with the corporation involved in the *Aiken* suit and was not involved in the transactions therein concerned. This petition for certiorari is filed on behalf of Stanley Field who is a defendant below in the instant case only.

As hereinafter stated in the brief in support of this petition, Field stands before the Court on a basis entirely distinct and different from any other party.

OPINIONS BELOW.

The Memoranda of Holdings by the District Court appear at pages 292-300 of the record, and have not been reported.[1] The opinion of the Seventh Circuit Court of Appeals, dated August 22, 1941, with petitions for rehearing denied October 1, 1941, which reverses the District Court in part, is reported at 122 F. (2d) 755. (R. 344-346) The opinion of the Seventh Circuit Court of Appeals in *Aiken, et al.* v. *Insull, et al.* is reported at 122 F. (2d) 746. (R. 347-358)

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. Sec. 347(a)). The judgment of the Circuit Court of Appeals for the Seventh Circuit was entered October 1, 1941. (R. 405)

STATUTE INVOLVED.

In so far as this petition for certiorari is concerned, the case involves the former Section 23 of the 1919 Illinois Corporation Act. That section is set forth in full as Appendix B attached hereto.

[1] Those portions of the memoranda of the District Court dealing with the issue here involved are included as Appendix A hereto.

STATEMENT OF FACTS.

This action was brought on January 30, 1933, to recover damages from the directors of Corporation Securities Co. of Chicago (including the petitioner), following the bankruptcy of that Corporation which occurred in April, 1932. (R. 2) The complaint was filed in equity and purported to be a class suit brought by a Delaware corporation as holder of certain serial gold notes of Corporation Securities Co. of Chicago on behalf of itself and "all other owners and holders of such other notes similarly situated, and all other creditors, who desire to join in this proceeding and share the costs and expenses thereof * * *." (R. 2) More than four years later a so-called "committee" intervened on behalf of certain noteholders. (R. 47)

The Circuit Court of Appeals reversed the District Court's order dismissing the complaint in so far as a violation of Section 23 of the 1919 Illinois Corporation Act was averred. The only allegations upon which the statutory violation by the directors is charged are set forth in the following five sentences of the complaint:

> "22. At no time between January 1, 1930 and April 16, 1932, did the company have any actual surplus whatsoever. The books of the company, when the irregularities set forth above[1] are corrected, show that the company did not have, and the company did not in fact have, cash income for any year in excess of its cash expenses and interest charges for that year."
>
> "33. As hereinabove set forth, the company had no surplus at any time during the years 1930, 1931 and 1932. Nevertheless, the company paid cash dividends during each of these three years on all classes of its

[1] These so-called "irregularities" are described in paragraphs 16-19 of the complaint, and consist of certain bookkeeping practices which the plaintiff charges were erroneous and not in conformity with the "accounting practices" which the plaintiff urges should have been followed. (R. 8-9)

Preferred Stock, the exact amounts of which cash dividends are unknown to the plaintiff."

"34. The Board of Directors authorized or ratified the payment of dividends as set forth above, thereby rendering themselves jointly and severally liable, within the purview of the Statute of the State of Illinois, set forth above, to the plaintiff, and all other creditors and holders of contracts of the company." (R. 10, 12)

In paragraph 32 of the complaint, Section 23 of the 1919 Illinois Corporation Act was quoted, providing in part as follows:

"The directors shall jointly and severally be liable for the debts and contracts of the corporation in the following cases: * * * (2) For declaring or assenting to a dividend if the corporation is, or is thereby, rendered insolvent, or its capital is thereby impaired, to the extent of such dividend; * * *."[1]

Promptly after the institution of the suit in 1933 this petitioner filed a motion to dismiss the complaint, urging, among other things, that the complaint was totally insufficient to state a cause of action under the former Illinois statute in that it contained no allegation of knowledge by the defendant directors, no allegation that the Corporation was insolvent or was rendered insolvent or that its capital was impaired by the dividends, and in that the allegation in respect of assent was ratification after the fact rather than approval in advance of the fact.

Petitioner's motion to dismiss, and motions to dismiss

[1] The complaint also alleged liability on the part of the defendant directors for assenting to a supposed violation by Corporation Securities Co. of covenants contained in its Serial Gold Notes against pledging its assets without ratably securing the holders of those notes, by the pledging of securities to certain Chicago and New York banks. As to this charge, the District Court sustained motions for summary judgment in favor of the defendants based on *res adjudicata*, and the Seventh Circuit Court of Appeals affirmed. The plaintiff below has filed a petition for certiorari from that action of the Circuit Court of Appeals, and the petitioner here, Stanley Field, will file a brief in opposition thereto.

filed by other defendants, were continued generally on January 19, 1934 (R. 39), and were not brought up for argument until late in 1939. At that time the District Court sustained the defendant directors' motions to dismiss the complaint in respect of the charge of violation of Section 23 of the 1919 Illinois Corporation Act, on the ground that the complaint stated no actionable facts. (R. 298-299) At this juncture, the plaintiff moved to amend the complaint in certain particulars. This motion was denied by the District Court, primarily because of the long delay. The District Court entered its final decree on March 7, 1940, disposing of the entire cause, including the charge based on violation of the Illinois statute, in favor of the defendant directors. The Seventh Circuit Court of Appeals, while affirming the judgment of the District Court in other respects, reversed it in respect of the alleged violation of the former Illinois statute and remanded the case for trial in the District Court. The Circuit Court of Appeals further held that the District Court should have allowed the amendment to the complaint.

QUESTIONS PRESENTED.

The essential question is: Did the complaint state a cause of action against Field under the former Illinois statute (Section 23 of the 1919 Illinois Corporation Act), in respect to the payment of dividends in the early thirties prior to bankruptcy? This essential question may be restated into the following two subordinate questions:

(a) Was the complaint fatally defective in failing to allege that the petitioner had knowledge of insolvency or impairment of capital at the time of dividends?

(b) Was the complaint fatally defective in alleging ratification after payment of dividends instead of assent in advance of dividends?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The Seventh Circuit Court of Appeals has decided an important question of local law arising exclusively under a former Illinois statute in conflict with the applicable decisions of the Supreme Court of Illinois in the following respects:

(a) In holding that this petitioner, Field, may be liable, if the evidence warrants it, even though neither the complaint nor the amendment thereto alleged that he knew at the time the dividends were declared and paid, or at any time, that the company was, or was thereby rendered, insolvent, or that its capital was impaired; and

(b) In construing the word "assent" in the former Illinois statute to include ratification of a dividend after the fact.

WHEREFORE your petitioner respectfully prays that, the printed record of the case already having been filed with this Court on the petition for certiorari of the plaintiff, this Court shall reverse the order of the United States Circuit Court of Appeals for the Seventh Circuit, sitting at Chicago, Illinois, in so far as it reverses the order of the District Court for the Northern District of Illinois, Eastern Division; that the judgment of said District Court shall be ordered affirmed; and that the petitioner shall be granted such other and further relief as to this Honorable Court may seem just and proper.

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